

RISK CONTROL SERVICES

MARIJUANA – EVOLVING REGULATIONS



As of July 2019, 33 states plus the District of Columbia had laws on the books legalizing recreational marijuana; most states have legalized medical marijuana in some form as well. But federal lawmakers still maintain the status of marijuana and its derivatives as a Schedule I drug—defined as those ‘with no currently accepted medical use and a high potential for abuse.’

Times are changing.

The House Financial Services Committee is finishing markups on several bills, including the SAFE Banking Act, which will provide safe harbor for banks and insurers that provide financial services to cannabis-related legal businesses. The prospect that this bill will pass the Senate is uncertain, but with general backing from a variety of consumer-based trades, including insurance, it is inevitable that regulations will change within the next few years.

This leaves you—providers of subsidized housing—in a difficult position. Many of you have been reminding your Section 8 landlords and tenants that marijuana use, whether medical or recreational, remains a violation of federal law. In over half the country, that communication would mean that tenants in subsidized housing would be prohibited from following their doctor’s orders, while their neighbor next door who is living in privately owned housing is allowed by state law to follow their doctor’s plan. In this age of disparate impact, it’s easy to see how this different treatment could be construed as discrimination.

Until HUD releases guidelines related to the use of marijuana, The Quality Housing and Work Responsibility Act (QHWRA) must prevail. It requires PHAs to prohibit marijuana users from participating in public housing or housing choice voucher programs, regardless of whether they’re using the drug for medicinal or recreational purposes.

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You may have some discretion when it comes to determining the appropriateness of program termination for existing residents who use medical marijuana. In view of the shifting political and legal climate, it's a good idea to review the actions you plan to take with your legal counsel.

Did You Know?

Marijuana is not the only controversial drug that housing providers must address. The high price tag of cleaning up [meth labs](#) and the health risks that [opioid exposure](#) poses make it imperative to train your staff to watch for suspicious drug-related activity.